IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

IN RE:	§	
	§	
WADHWA DENTAL, P.A.,	§	**CASE NO. 16-52134-RBK**
	§	
DEBTOR	§	**CHAPTER 11**

FIRST APPLICATION
FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES OF
H. ANTHONY HERVOL, COUNSEL FOR THE DEBTOR-IN-POSSESION
[TIME PERIOD: SEPTEMBER 23, 2016 THROUGH APRIL 30, 2017]

THIS PLEADING REQUESTS RELIEF THAT MAY BE ADVERSE TO YOUR INTERESTS. IF NO TIMELY RESPONSE IS FILED WITHIN TWENTY-ONE (21) DAYS FROM THE DATE OF SERVICE, THE RELIEF REQUESTED HEREIN MAY BE GRANTED WITHOUT A HEARING BEING HELD. A TIMELY FILED RESPONSE IS NECESSARY FOR A HEARING TO BE HELD.

TO THE HONORABLE RONALD B. KING, CHIEF UNITED STATES BANKRUPTCY JUDGE:

Comes now, H. Anthony Hervol (hereinafter "Applicant"), Counsel for Wadhwa Dental PA, the Debtor-in-possession (hereinafter "Debtor"), who files this First Application for Compensation and Reimbursement of Expenses, and would respectfully show unto the Court the following:

1. This Application is filed pursuant to 11 U.S.C. §330(a), 11 U.S.C. §331 and Fed. R. Bankr. P. 2016, and Local Rule 2016.

BACKGROUND

2. On September 22, 2016, Applicant filed on behalf of the Debtor a voluntary petition for relief under Chapter 11 of Title 11, United States Code.

3. On September 23, 2016, Applicant filed his Application to Approve Employment of Attorney for the Debtor, which the Court approved by Order entered October 18, 2016. (Doc. #16).

4. Applicant has represented the Debtor since the commencement of this case, and prior thereto in connection with services rendered in planning and preparing the documents needed to file the case. This Application covers the time period of September 23, 2016 through April 30, 2017.

5. Applicant has not previously filed a fee application in this case.

6. Prior to the commencement of the Debtor's case, the owner of the Debtor paid Applicant an attorney fee retainer of $15,000.00, plus a cost deposit of $1,717.00. Upon information and belief, the source of such funds is not property of this bankruptcy estate, but instead property of the owner of the Debtor.

7. Applicant has not received any sums from the Debtor or its owner since the filing of this case.

8. Prior to the filing of this case, Applicant's office earned $5,937.50 in attorney's fees, and paid out $1,717.00 in costs for the filing fee and $0.00 in pre-petition case related expenses. Applicant's fee agreement with the Debtor provided for immediate disbursement or payment for pre-petition services, the Chapter 11 filing fee and pre-petition expenses incurred. The Agreement provided for disbursement for attorney's fees for post-petition services, costs and expenses upon approval of such sums by the bankruptcy court through the filing of a fee application. Applicant is therefore holding $9,062.50 of the retainer from this case remaining.

9. No prior payments have been made to Applicant other than those identified above. Applicant has no agreement with any party to share compensation. Fed. R. Bankr. P. 2016(a).

AMOUNTS REQUESTED

10. Applicant seeks approval herein of compensation for post-petition services in the amount of $14,877.00 and reimbursement of expenses in the amount of $533.22.

SUPPORTING DOCUMENTS

11. Pursuant to Local Rule 2016, this Application includes the following attached supporting documents:

Exhibit "A" - Fee Application Summary in the form of Appendix L-2016-a-2

Exhibit "B" - Compensation/Expense Support Exhibit

12. Applicant also attaches the following documents for the Court's consideration:

Exhibit "C" - Affidavit of H. Anthony Hervol, which is incorporated herein by reference.

JOHNSON FACTORS ANALYSIS

13. The propriety of an attorney's fee award is governed by the criteria outlined by the Fifth Circuit in ***Johnson v. Georgia Highway Express, Inc.***, 488 F.2d 714 (5th Cir. 1974) as modified by the subsequent decision in ***Walker v. U.S. Dep't of Housing and Urban Dev.***, 99 F.3d 761 (5th Cir. 1996). These criteria include: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill required to perform the legal services properly; (4) the preclusion of other employment by the attorney due to the acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client or other circumstances; (8) the result obtained; (9) the experience, reputation and ability of the attorneys; (10) the desirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. ***Johnson,*** 488

F.2d at 717-719; ***Walker***, 99 F.3d at 771-772. As recognized by the Fifth Circuit, the use of the second, third, eighth and ninth factors have been greatly limited by the Supreme Court and are now only appropriate in "rare cases supported by specific evidence in the recorded and detailed findings by the courts." ***Walker***, 99 F.3d at 771-772.

14. Applicant requests compensation based on the factors set forth in 11 U.S.C. § 330 and ***Johnson***. These factors include the following:

A. Time and Labor Required - an itemized description of the time and labor of Applicant appears in Exhibit “B” attached hereto. The total hours of time expended by Applicant and his legal assistant are set forth in Exhibit “B” and Paragraph 10 of the Affidavit attached hereto (Exhibit “C”, hereinafter “*Hervol Aff.*”).

B. The Novelty and Difficulty of the Questions Presented - This case presented somewhat novel and difficult questions compared to other small business reorganization cases handled by Applicant, as this case required the filing and pursuit of an Adversary Proceeding for the Debtor to gain control of its business. *Hervol Aff. at para. 17.*

C. The Skill Required to Perform the Legal Services Properly - The case involved skill and experience in working with bankruptcy cases and, in particular, in dealing with the structure and procedural mechanisms involved in a Chapter 11 reorganization case. Further, the case required experience in pursuing adversarial litigation before the bankruptcy court. In paragraph 6 of the attached Affidavit, Applicant notes his prior experience.

D. The Preclusion of Other Employment by the Attorney Due to Acceptance of the Case - As set forth in Paragraph 14 of Applicant’s Affidavit attached hereto as Exhibit “C”, the time expended by Counsel in this case has precluded, to a proportionate extent, the ability of Counsel to obtain and work on other matters during this time. As noted in the attached Compensation and Support Exhibit, the case has necessitated several Court appearances, an initial debtor interview with the United States Trustee's office, a 341 meeting, a significant expenditure of time attending to the Adversary Proceeding, and a commitment of more than 50 hours by Applicant alone. *See Exh. "B"*.

E. The Customary Fee. Applicant has almost 25 years' experience primarily in the bankruptcy and litigation areas. Applicant is charging the Debtor in this case $285.00 per hour for attorney time, and $95.00 per hour for paralegal time. Attorney's fees are to be calculated at "the prevailing market rates in the relevant community." ***Blum v. Stenson***, 465 U.S. 886, 895 (1984). The hourly rates charged by Applicant for this case are *at or below* the customary and reasonable rates in the Western District of Texas given the nature of the case and the experience of Applicant. *See Hervol Aff. at para. 15.*

F. Whether the fee is fixed or contingent. Applicant did not assume the representation of the Debtor in this case on a contingent fee basis.

G. Time Limitations Imposed by the Client or Other Circumstances - as noted above and in the attached Affidavit, this case has required significant commitments of time, particularly in the early stages as was necessary to pursue relief to assist the Debtor's principal to get control of the Debtor's assets and the accounts receivable from the business so that the Debtor's creditor could be repaid through a Chapter 11 reorganization. *Hervol Aff. at para. 14.*

H. Results Obtained - Applicant and his office has assisted the Debtor in properly prosecuting his case and the accompanying adversary proceeding. The services rendered conferred substantial value and benefit to the bankruptcy estate. Prior to the filing of its bankruptcy case, the Debtor was cut off from its accounts receivable and all sources of revenue needed to pay its creditors and operating expenses. The Debtor was at the mercy of a third party who had complete control of the Debtor's revenues, but was not paying the Debtor's expenses. Through this case and the accompanying adversary proceeding, the Debtor and its principal have been able to get control of the Debtor's most productive office and generate revenue which will be sufficient to ensure a plan of reorganization that will pay all of the Debtor's obligations. *Hervol Aff. at para. 17.*

I. The Experience, Reputation and Ability of the Attorneys - Applicant's qualifications are detailed Paragraphs 2, 6 and 7 of Exhibit "C" attached hereto.

J. The "Undesirability" of the Case – This case was not generally undesirable because the Debtor's representative has responsive throughout and has had good intentions from the very beginning. However, bankruptcy reorganization cases in general can be undesirable because of the manner in which bankruptcy compensation is paid. Debtor's counsel is frequently required to devote significant time to a case well before receiving payment for the services rendered. Further, payment of additional sums in excess of any retainer received generally depends upon the Debtor's ability to successfully reorganize. These factors can make a bankruptcy reorganization case less desirable than other types of cases.

K. Nature and length of the professional relationship with the client - Applicant has not previously represented the Debtor before. This factor is not considered dispositive of the lodestar analysis, and Applicant therefore does not believe this factor is pertinent in determining the fees in this case.

L. Awards in Similar Cases - Applicant believes that the amount requested is below or commensurate with what other attorneys of similar experience would charge in similar cases. Counsel is not aware of any factors contained in awards in similar cases that would adversely affect the analysis of the reasonableness of the attorney's fees in this case.

OTHER FACTORS

15. Although local rules permit reasonable billing of time for the preparation of a fee application, Applicant has not charged the Debtor any amount for the preparation of this Application.

16. Applicant has not billed the Debtor for any travel time in connection with this Application.

17. Based upon all of the foregoing, under the relevant ***Johnson*** factors, Applicant assets that the fees incurred in representing the Debtor in this case are reasonable and should be awarded in their entirety. Accordingly, based upon the above, Applicant submits that for the 7 ½ month period of time referenced herein, $14,877.00 is a reasonable attorney fee for the necessary services of Debtor's attorney incurred in connection with this case.

REQUEST FOR REIMBURSEMENT OF EXPENSES

18. In connection with Applicant's representation of the Debtor in this case and in the matters for which he was employed, Counsel paid the following post-petition costs on Debtor's behalf: (a). $410.00 for the Adversary Proceeding filing fee and copies of court proceedings. *Hervol Aff. at para. 13.* Applicant also seeks reimbursement of expenses for postage, copying, parking at the courthouse, pacer and other online research fees in the total amount of $123.22. All of these items are itemized and listed at the end of the billing summary attached hereto as

Exhibit "B" under the "Expenses" heading. These items were reasonable and necessary to the successful prosecution of the Debtor's bankruptcy case, and Applicant seeks an order awarding such amounts to him for allowed reimbursement of expenses.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Applicant moves for approval of post-petition attorneys' fees in connection with his representation of the Debtor in this case in the amount of $14,877.00, as well as approval of $410.00 in costs advanced and $123.22 in expenses advanced, for the time period referenced herein. Applicant further prays that the Court authorize the payment of the funds remaining from the balance of the pre-petition retainer paid in this case, and authorize the Debtor to pay any remaining sums due thereafter. Applicant further prays for general relief.

Respectfully submitted,

LAW OFFICE OF H. ANTHONY HERVOL
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San Antonio, Texas 78228
(210) 522-9500
(210) 522-0205 (Fax)

By____/s/ H. Anthony Hervol__________________
H. Anthony Hervol
State Bar Number 00784264
Attorney for Debtor

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing Application has been served upon the parties listed below, by the methods indicated hereunder, and to the parties on the attached mailing list (except for the parties represented by counsel shown below) by first class mail, postage prepaid, on the _9th_ day of May, 2017.

DEBTOR:
Wadhwa Dental, PA
8943 Cimarron Route
San Antonio, Texas 78255
Via Electronic Mail, with consent

REQUESTING NOTICE:
Don Stecker
LINEBARGER, GOGGAN, BLAIR
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Attorneys for Bexar County
Via the Court's ECF Filing System

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UNITED STATES TRUSTEE:
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Via the Court's ECF Filing System

__/s/ H. Anthony Hervol____________
H. Anthony Hervol
Attorney for Debtor

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Lexus Financial Services
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U.S. Bank - Equipment Finance
Choice Health Finance
1310 Madrid St.
Marshall, MN 56258